

In the United States  
Circuit Court of Appeals  
For the Ninth Circuit. 21

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ROSE PACKARD SHYVERS,

*Appellant,*

*vs.*

THE SECURITY-FIRST NATIONAL BANK OF LOS ANGELES,

*Appellee.*

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APPELLEE'S SUPPLEMENTAL BRIEF.

Upon Appeal from the District Court of the United States for the  
Southern District of California, Central Division.

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**FILED**



No. 9153.

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The Question.

Can a debtor, who has not resided in the United States of America or been therein since 1932, who is married to an English shipbuilder, whose occupation is that of a housewife, who owns real property in England, and who owns a ranch in Southern California which is wholly leased out to third parties, who conduct thereon dairies and agricultural pursuits, qualify under Section 75 of the Bankruptcy Act of the United States of America?

In accordance with the order of this Honorable Court appellant herein has filed her supplemental brief relative to the particular question hereinabove set forth. It is respectfully submitted that appellant's brief in no manner constitutes an answer to this question, in whole or in part,

and that the burden of proof is upon her to show to the Court that she is qualified to receive the benefits under said Section 75 of the Bankruptcy Act.

Subsection (n) of said Section 75 reads, in part, as follows:

“The filing of a petition or answer with the clerk of court, or leaving it with the Conciliation Commissioner for the purpose of forwarding same to the clerk of court, praying for relief under Section 75 of this Act, as amended, *shall immediately subject the farmer and all his property, wherever located, for the purposes of this section, to the exclusive jurisdiction of the Court, including all real or personal property, or any equity or right in any such property, including, among others, contracts for purchase, contracts for deed, or conditional sales contracts, the right or the equity of redemption where the period of redemption has not or had not expired, or where a deed of trust has been given as security, or where the sale has not or had not been confirmed, or where deed had not been delivered, at the time of filing the petition.*” (Italics ours.)

Subsection (p) of said Section 75 reads as follows:

“The prohibitions of Section (o) . . . shall apply to all judicial or official proceedings in any court or under the directions of any official, and shall apply to all creditors, public or private, and to all of the debtor’s property, wherever located. All such property shall be under the sole jurisdiction and control of the Court in Bankruptcy and subject to the payment of the debtor farmer’s creditors, as provided for in Section 75 of this Act.”

Again, subsection (s) of said Section 75, commonly known as Frazier-Lemke Farm Relief Act, after stating

that any farmer failing to obtain the acceptance of a majority in number and amount of all creditors whose claims are affected by a composition or extension proposal, or if he feels aggrieved by the composition or extension proposal, may amend his petition or answer, asking to be adjudged a bankrupt, then states, in part, as follows:

“Such farmer may, at the same time, or at the time of the first hearing, petition the Court that *all of his property, wherever located*, whether pledged, encumbered, or unencumbered, be appraised, and that his unencumbered exemptions, and unencumbered interest or equity in his exemptions as prescribed by state law be set aside to him, and that he be allowed to retain possession under the supervision and control of the Court of any part or parcel of all of the remainder of his property, including his encumbered exemptions, under the terms and conditions set forth in this section.” (Italics ours.)

The second paragraph of subsection (n) of said Section 75 provides, in part, as follows:

“In proceedings under this section, *except as otherwise provided herein*, the jurisdiction and powers of the courts, the title, powers, and duties of its officers, the duties of the farmer, and the rights and liabilities of the creditors, and of all persons, *with respect to the property of the farmer* and the jurisdiction of the appellate courts, shall be the same as if a voluntary petition for adjudication had been filed and a decree of adjudication had been entered on the day when the farmer’s petition, asking to be adjudged a bankrupt, was filed with the clerk of the court or left with the Conciliation Commissioner for the purpose of forwarding same to the clerk of the court.” (Italics ours.)

The decision in the case of *In re Hudson Coal Company*, 22 Fed. Supp. 768, states, in part, as follows:

“The purpose of Section 77B of the Bankruptcy Act is to benefit the company and all persons in interest, and the burden is therefore on the petitioners for reorganization to establish their legal standing to institute the proceeding, their good faith, and the need for such reorganization. These questions lie at the threshold of the case before the Court should interfere with the affairs of the company. Such proceedings should be instituted in good faith, either by the company itself or by the creditors for the benefit of the company. The questions of law that must be determined at the threshold of this case, therefore, are the standing of the creditor petitioners and their good faith.”

It is respectfully submitted to this Honorable Court that both Section 77B of the Bankruptcy Act and its successor, Chapter X thereof, and Section 75 of the Bankruptcy Act constitute legislation passed by Congress for the benefit of two particular classes, and that each of said Acts is in derogation of the ordinary legal rights of creditors; that in fundamental principle the theory of each Act is the same and the enactment thereof governed by the identical considerations; therefore, that the purpose of Section 75 of the Bankruptcy Act was to benefit American farmers, as Section 77B of the Bankruptcy Act was passed to benefit American corporations and their creditors; and that, by reason thereof, the burden is upon the debtor to establish her legal standing to institute this proceeding. In other words, she must establish that she is a member of the class qualified by

Congress to seek the benefits of said Section 75 of the Bankruptcy Act. If she fails to sustain this burden then her proceeding should be dismissed.

Section 75 of the Bankruptcy Act, it is true, is subject to the general rules of bankruptcy *except as otherwise provided in said Section 75*. It is admitted that the debtor here has been a resident of England since 1932, at least, and that she owns real property in England. How, then, can she qualify under Section 75, when subsection (n) thereof provides that not only she, but all of her property, wherever located, shall be subjected to the exclusive jurisdiction of the Court? Again, in subsection (p) of said Section 75, it is provided that *all* of the farmer's property shall be under the sole jurisdiction and control of the Court in bankruptcy, and subject to the payment of the debtor farmer's creditors. Again the query presents itself: How could a Court in the United States of America subject the real property of the debtor which is in England to the payment of the debtor's creditors here in the United States of America? Furthermore, subsection (s) of said Section 75 provides that in the event a farmer does not effect a composition with his creditors, and he petitions the Court for relief under said subsection (s), all of his property, *wherever located*, be appraised, and that the Court shall designate it and appoint appraisers therefor. Any appraiser appointed in England would not be under the jurisdiction of United States Courts and subject to cross-examination with the right of appeal.

In view of the provisions of the Act, and the case cited, it is respectfully submitted to this Honorable Court that the debtor in this proceeding has utterly failed to sustain the burden, which is upon her, to show to the Court that she is a person entitled to the benefits of the Act and that, on the contrary, it has been conclusively shown that, were she permitted to proceed, she could not comply with the terms and provisions of the Act because of the physical situation, and that the Court would not have jurisdiction of either her person or all of her property, both of which are required by the terms of the Act which, in this regard, are not subject to the general rules of bankruptcy, because such conditions are specifically provided for in said Section 75.

Respectfully submitted,

THORPE & BRIDGES,

By ROANE THORPE,

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